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10/622,172	07/18/2003	Richard N. Shapiro	P06288US07/RFH	7620

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EXAMINER

AVERY, BRIDGET D

ART UNIT PAPER NUMBER

3618

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/622,172	SHAPIRO, RICHARD N.	
	Examiner	Art Unit	
	Bridget Avery	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 46-66, 68-73, 75-94 and 98-105 is/are pending in the application.
- 4a) Of the above claim(s) 76, 78, 83, 84 and 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46-66, 68-73, 75, 77, 79-82, 85, 87-94 and 98-105 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Species I, Sub-species II and Sub-species III in the reply filed on April 17, 2006 is acknowledged.
2. Claims 76, 78, 83, 84 and 86 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 17, 2006.
3. Applicant has canceled claims 67, 74 and 95-97.

### *Drawings*

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **the partial cowl defined in claim 71 and the pair of elongate members (of the handle) defining at least one extensible portion and a second receiving portion as defined in claim 75** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: **the following claims/terms are not supported by applicant's specification:** in claim 51, arm portion, brace engaging intermediate portion (suggestion as best understood: fork pivot head); in claim 55, affixing axis (suggestion: a vertical axis defined by a fork pivot head); in claim 59, one spring-biased latch; in claim 61, one sliding member; in claim 66, a selectively movable mounting frame structure; in claim 85, support base retention base; in claim 88, receiving portions (suggestion as best understood: receiving element); in claim 91, an underside aspect **and** one hand grasp; in claim 103, an affixing axis (suggestion: a vertical axis defined by a fork pivot head) **and** one hand grasp; in claim 104, one hand grasping component (suggestion: handle); and in claim 105, support base underside aspect. **Applicant is encouraged to check the claims and any future amendments thoroughly to avoid any further inconsistencies.**

### ***Claim Objections***

6. Claims 46-66, 68-75, 77, 79-82, 85-94 and 98-105 are objected to because of the following informalities:

7. In several of the claims listed above, applicants use of "support base structure", "base structure", "device support base", and "support base retention base" is confusing. The terms used to define applicant's **support base** must be consistent throughout the claims.

8. In several of the claims, applicant's use of the terms "the" and "said" together is grammatically inconsistent. Applicant is encouraged to refrain from any further use of "the said" in the claims. **Either** "the" **or** "said" should be used to define elements previously introduced to the claims. Attention is directed, but not limited to, claims 46, 49, 50, 91 and 105.

9. In claim 46, line 17, "said" before "abutment" should be changed to --being in--;

10. In claim 52, --a-- should be inserted before "center";
  11. In claims 56-58, "latch means" should be changed to --latching means-- to be consistent with claim 46; and
  12. In claims 59-61, "mounted to" should be changed to --mounted on--.
- Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 53, 54 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
14. Claim 53 recites the limitation "said first, operative wheel support unit position" in line 4. There is insufficient antecedent basis for this limitation in the claim.
15. In claim 54, applicant's recitation of "a user-controlled wheel braking means" is confusing because according to the specification the braking means is the same as the "at least one underside support" already defined in claim 46. A single element can be defined as having more than one function but, however, a single element cannot be claimed as two separate elements.
16. Claim 85 recites the limitation "the support base retention base" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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17. Claims 46, 49-66, 72, 73, 77, 79, 82, 85, 88-92, 94, 98, 99 and 102-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Del Raso (US Patent 3,565,453).

Del Raso teaches a wheeled carrier device similar to applicants. The device including: a support base, a plurality of stub walls, a bracing portion, defining a side elevation profile. The device is foldable from an operative position to a second position where the foldable elements are within the side elevation profile when in the second position. The corresponding elements are as follows: wheel attaching means (25, 23); bracing portion (28) with abutment (see camming surface 25 on the wheel attaching means in Figures 1, 4 and 5); handle (13); walls (11); base (12); handle latching means (29, 31) for the first position; latching means (13, 14, 22) for the second position; wheel support unit attaching means (19); handle receiving portions (15); brake (54), as best understood and the same as applicants; and wheel (24). Re claim 53, note force via tension spring 22 and see column 1, lines 47-50 and claim 1 (j). RE claim 54, see brake/underside support (14); Re claim 56, see tension spring (22); Re claim 60, note the latch is spring-biased via spring (22), bracket (18) and table (19); Re claim 61, note Figures 4 and 5 and sliding action of tie rod (28) and table (19) when the handles are pushed to the folded position; Re claim 63, see bracket (18) and table (19); Re claim 66, the fork camming surface (25) is a selectively movable mounting frame structure, as broadly recited; Re claim 72, at least one stage is latched via slotted plate (29) and thumb nut (31); Re the movement of the wheel attaching means being approximately 90 degrees and 180 degrees, applicant's attention is directed to Figures 4 and 5.

18. Claims 46-55, 57, 58, 61-65, 72, 73, 77, 80-82, 88, 91-93, 98 and 101-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Souris (US Patent 2,727,751).

Souris teaches a wheeled carrier device similar to applicants. The device including: walls (11); a bracing portion (13-16); wheel attaching means (44, 46) including a selectively movable mounting frame structure (44), as defined in claim 93; a wheel (26); a handle (31); underside support (27); and latching means (37, 40, 48, 52, 54, 48, 34, 55 and also note the friction engagement described in column 3, lines 58-61). Re claim 49, applicant's attention is directed to column 3, lines 64-66. Re claim

50, see column 3, lines 62-64. Re claims 51 and 93, as best understood, see arm/bracket (42) and brace engaging intermediate portion/selectively movable mounting frame structure/hinge (44). Re claim 54, see brake (27 same as applicant's). Re claim 55, note the axis defined by bracket (42) and hinge (44) as well as the vertical axis defined by pivot bolt (45) and locked against rotational movement via latch/clip 55). Re claim 58, note wheel fork (46). Re claim 61, note the wheel fork (46) "slides" into guide member (48), see Figure 6. Re claims 62 and 63, see latch bar (52). Re 80, the underside supports (27) can be used as handles when the device is in the position shown in Figure 3. Re claim 102, see column 4, lines 2-6.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453) in view of Chittenden (US Patent 1,823,816).

Del Raso teaches the features above but lacks the teaching of independently manipulable handle members and independently manipulable underside supports.

Chittenden teaches independently manipulable handle members (13), and independently manipulable underside supports (12).

Based on the teachings of Chittenden, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to permit selective adjustment and movement of either handle or underside support for negotiating uneven or rough terrain.

20. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453) in view of Feick (US Patent 6,908,088).

Del Raso teaches the features above but lacks the teaching of a friction element extending from the central axis of rotation of the wheel.

Feick teaches a friction element (30) extending from the central axis of rotation of the wheel.

Based on the teachings of Feick, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to add a friction element to extend from the central axis of rotation of the wheel to assist a user when dumping a load where dumping the contents requires the wheelbarrow to be oriented in a vertical position.

21. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453) in view of Steer (US Patent 4,921,305).

Del Raso teaches the features above but lacks the teaching of a U-shaped handle.

Steer teaches a U-shaped handle (10).

Based on the teachings of Steer, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to add a horizontal member to the handles of Del Raso to ensure that both handles will move simultaneously if the user is standing at the side of the wheelbarrow.

22. Claims 70, 75, 81 and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453) in view of Binz (US Patent 2,484,677).

Del Raso teaches the features above but lacks the teaching of extendable handles and a U-shaped underside support.

Binz teaches old and well known extendable handles (51 via 53) and a U-shaped underside support (14, 21).

Based on the teachings of Binz, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to replace the handle of Del



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Raso with extendable handles to permit the handles to be readily reduced in length for storage. It would have been obvious to one having ordinary skill in the art, at the time the invention was made to add a horizontal member to the underside support to enhance the structural integrity of the device.

23. Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453) in view of Edhardt (US Patent 2,660,446).

Del Raso teaches the features above but lacks the teaching of a cowl.

Edhardt teaches a cowl (4).

Based on the teachings of Edhardt, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to add a cowl over the wheel of the device of Del Raso to protect the wheel against earth and dirt, as taught in column 1, lines 16-26.

24. Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Raso ('453).

Del Raso teaches the features above but lacks the teaching of flexible material.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made to use a flexible material to construct parts of the wheeled device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tomchak et al. shows a collapsible wheelbarrow and associated method.

Purpuro shows a hiker's trail carrier.

McEnteggart shows a collapsible wheelbarrow.

Groleau shows a collapsible wheelbarrow.

Morris shows a lifting and supporting attachment for wheelbarrows.

Johnson shows a convertible wheelbarrow/cart.

Primeau shows a wheelbarrow with pivoted handles.

Wetzel shows a wheelbarrow type carrier.

Grable et al. shows a pivot load bearing plate for wheelbarrows.

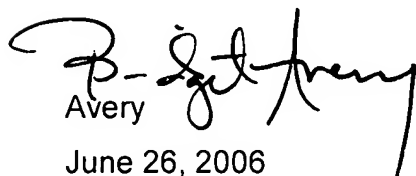
Guimond shows a convertible hand cart.

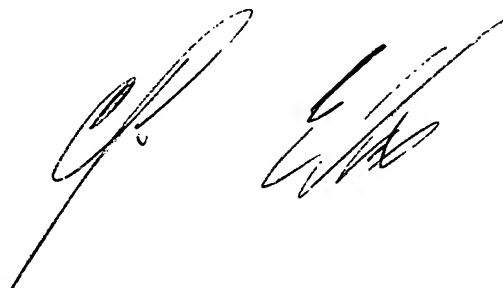
Binz shows a collapsible motor carrier.

Carrol shows a combination wheelbarrow.

Booth shows a wheelbarrow.

26. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 571-272-6691.

  
Avery  
June 26, 2006



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